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THE CADI : THE HISTORY OF THIS INSTITUTION

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THE CADI : THE HISTORY OF THIS INSTITUTION

by Richard Gottheil (New-York).

To dispense justice was an early preoccupation of Mohammedan rulers. While still in Mecca, the prophet is reported to have said. « Oh David, verily we have made thee a vicegerent ; judge then between men with truth and follow not lust, for it will lead thee astray from the path of God[1] ». By the side of this tradition, which belongs to the stock in trade of all writers upon the Cadis[2], there are others such as ». There will come upon a judge, at the day of resurrection, such fear and horror that he will wish : Would to God that I had not judged between two persons in a trial for the value of a single date[3] ». Similar sayings are put in the mouth of all the great men of the budding state. 'Alī is reported to have said to Shuraiḥ. « Thy tongue is thy servant, as long as thou dost not speak ; as soon as thou speakest, thou becomest its servant. Therefore have a good care what judgement thou givest, in what manner thou judgest, and how thou judgest[4] ». These traditions do not necessarily go back to the men with whose name they are connected ; but they show the value placed by the Mohammedan world upon the matter. No sooner had Mohammed got to Medina, than we find him promulgating an ordinance that was destined to bring at least a semblance of order into the relations of the various parts of the state[5]. Among the heathen Arabs we find few traces of any recognized and standard law or order. Law was still bound up intimately with religion ; or perhaps one ought to say that whatever order there was in their communities had religion as its background. Security for life and property was attained by oath and contract[6]. The power of might in war and the right of asylum were the final arbiters when differences occurred. The high hand with which Mohammed ruled the religious affairs of the new community was felt also in the ordinary life of its members. The state was a theocracy, religion was still the ultima ratio upon which all the affairs of state were based. That which really distinguishes Mohammed is his sense of the necessity of order and regulation in the doings of men. In all matters that appertained to the holy cities and their immediate surroundings, Mohammed himself remained the chief arbiter and the dispenser of justice. But as soon as the limits of the realm commenced to enlarge, some provision had to be made that justice should be rendered also in such places the distance of which prevented a quick reference to the prophet himself. At various times we find him sending such men as Mu'ādh ibn Jabal, Abū Mūsā al-Ash'arī and even 'Alī to

[1] Surah 38, 25 (Palmer's translation). Cfr. Bukhārī (Ed. 1315 A. H.) IX, 67.

[2] e. g. Shihāb al-Dīn Aḥmad al-Abshihī, *K. al-Mustaṭraf*, I, 91.

[3] al-Tarṭūshī, *Sirāj al-Mulūk*, 36, 12.

[4] al-Hindī, *Kanz al-Ummāl* (Hyderabad 1312 A. H.) III. 173 (No. 2623). Other traditions will be found also in al-Abshihī *loc. cit.* I, 91 et seq.

[5] Wellhausen, *Skizzen*, IV. 67 et seq.

[6] *ibid.*, III, 124.

Yemen[1], to represent him there in his capacity as judge. No special office seems to have been created by Mohammed for this purpose. Those to whom the commission was given merely represented the prophet in one of his functions; as they might and as they did represent him in other functions. In similar manner the first Caliphs were the dispensers of justice in their own days; though they also from time to time delegated their authority in such matters to some one or other of their associates or ordered a representative to make the appointment[2]. The extension of Mohammedan power over large territories made this patriarchal form of government impossible. Omar himself had acted as judge during the Caliphat of Abū Bakr[3]; and with his usual thoroughness we are told that when two litigants appeared before him, he got down upon his knees and said. « Oh my God, help me to deal with them, for each one wishes me to subvert my opinion to his cause[4] ». But he is said to have been the first ruler to have appointed a Cadi in the provinces[5]. There can be little doubt that in the elaboration of the manner in which the Cadi held court, Roman and Persian examples exercised an influence; but it is not necessary, for this reason, to refer the origin of the whole system to these beginnings[6].

The authorities are not agreed upon the name of the first Cadis to be appointed in Islam. Ibn Khaldūn in his Prolegomena gives the following as the first Cadis appointed by Omar[7]: 'Uwaimir ibn Zaid abū al-Dardā, a companion of the prophet[8], in Medinah; Abū 'Umayyah Shuraiḥ al-Kindī, a follower, in Basrah[9]; and Abū

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[1] Bilādhurī 69: *wawalla mu'ādha bna Jabali al-janada wa-sayyara ilaihī al-ḳaḍā'a;* see, also, Ibn Ḥajar, *al-Iṣābah*, III, 872; al-Nawawī, *Tahdhīb al-Asmā'ī*, 561; al-Shahrastānī, *al-Milal wal-Niḥal*, I, 155; Māwardī, *al-Aḥkām al-Sulṭāniyyah*, Ed. Enger. 110, 18; al-Diyārbakrī, *Ta'rīkhal-Khamīs*, II, 158, 204; *Kanz al-Ummāl*, III, 173 (No. 2624); *Mischat ul Masābih*, II, 222. His directions to Mu'ādh can be found in *Kanz* V, 318 (Nos. 5671, 5672), and his praise of him VI, 189.

[2] e. g. Othmān instructs Abū Mūsa to appoint Ka'b ibn Sūr (or Siwār) as Cadi in Basra; Ibn Abd al-Barr, *Kitāb al-isti'āb fī ma'rifat al-aṣḥāb* (Hyderabad 1318 A.H.), 227; Sachau, *Zur ältesten Geschichte des muhammed. Rechts* (Wien 1870), 6 et seq.

[3] Ibn Sa'd, *Biographien*, III, 1. 130, 24; Ṭabarī, I, 2125, 2135 (he took the place of Mu'ādh ibn Jabal); al-Ḳalkashandī, *Subḥ al-A'shā* I, 251; Von Hammer, *Über die Länderverwaltung unter dem Chalifate*, 4.

[4] Ibn Sa'd III, 1. 208, 4; *Kanz al-Ummāl* III, No. 2614.

[5] *Wahuwa awwalu man istaḳḍa āl-ḳuḍāti fi-l-āmsār*, Ibn Sa'd III, 202, 27. Ṭabarī has quite a different tradition: *waḳīla lam yakun li-umarā'i fī ayyāmihi ḳāḍin*, I, 2212, 11; though Ṭabarī himself relates (I. 2481) that Abū Kurrah was appointed Cadi in Kūfah (cfr. also *loc. cit.* 2570, 4).

[6] As does D. Julian Ribera Tarrago, *Origines des justicia de Aragón* (Zaragoza 1897) 125: « el justicia fúe copiado por el islamismo de aquellas civilizaciones antiquas de quienes imitó la organizacion de la hacienda pública ».

[7] ed de Slane i, 397, transl. I, 448. There is a tradition, handed down in the name of Abū Sa d, that neither Muḥammad nor Abū Bakr appointed any Cadi, and that Omar did so only about the middle of his Califate; *Kanz al-Ummāl*, III, 175 (No. 2653).

[8] Ibn Ḥajar, *Iṣābah*, III, 90; Muḥammad ibn al-Athīr, *Usd al-ghābah*, V. 186 and Ibn 'Abd al-Barr, *Kitāb al-Isti'āb*, II, 466 know only of his appointment as Cadi in Damascus by Muawiyyah. According to al-Dhahabī, *Kitāb al-Ḥuffaẓ*, I, 19, he was Cadi for sixty years until the time of al-Ḥajjāj.

[9] Ibn Ḳutaibah, *Kitāb al-Ma'ārif* (ed. Wüstenfeld) 221; Ṭabarī I, 2578; *Kitāb ai-Isti'āb* II, 607 (also for sixty years); al-Dhahabī, *Kitāb al-Huffāẓ* II, 19 says that he was at Kūfah (cfr. II, 1).

Mūsā al-Ash'arī in Kūfah. In the Awā'il literature, however, other names are found[1] ; 'Abd Allāh ibn Naufal[2] in Medinah ; Abū Karrah al-Kindī in Kūfah, and after him Shuraiḥ ibn al-Ḥārith[3] or Jubair ibn al-Kash'am ; in Basrah, Ka'b ibn Sūr-al-Azdī[4] or Abū Maryam al-Ḥanafī[5] ; and in Madā'in, Salmān ibn Rabī'ah[6]. It was to Abū Mūsa that Omar is said to have sent the following instructions, which may represent the ideal of Mohammedan justice ; but which unfortunately were often only an ideal[7] : « To render justice is an obligation which must be observed, a usage that must be followed. Listen with attention to those that plead ; for it is useless to demand one's rights, if one have not advantage from it. Show no partiality in thy look, in thy tribunal, in thy sentence ; so that the powerful man count upon thy partiality, nor the feeble dispair of thy justice. He who demands justice must furnish a proof of his claim ; the defendant must purge himself by the oath. Among Mohammedans reconciliation is permissable, provided it does not render lawful what is unlawful, nor render unlawful what is lawful. If yesterday thou hast rendered a judgement and to-day thou seest fit to modify it, do not hesitate to accept the truth ; for the truth is eternal. It is better to return to the truth than to persist in the false. Ponder well that which may be the mere thought of the moment- if it is not warranted by the Koran or the Sunnah. Make thyself familiar with the resemblances of things and their similitudes, so as to be able to judge of things according to their analogies. If the plaintiff do not have the necessary proof with him, adjourn the case. If (after the expiration of the delay) he brings the necessary proof, give judgement in his favor ; if not, pronounce against him. This is the best way to dispel doubt and to enlighten ignorance. Mohammedans may serve as assessors, as notaries for each other, except such as have suffered corporal punishment or have been convicted of false witnessing or are suspect of garbling their genealogy or family connections. God be praised : he is the only judge who has no need of an oath and who can do without proofs ! Beware not to show signs of impatience or of ennui[8]. Give no indication of disdain towards those that plead. Such as establish the truth are recompenced of God and are mentioned with honor. Salutations ».

During the early days of the Caliphate, the special functions of the Cadi were not always clearly marked out ; or, rather, several offices were entrusted to one and

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[1] Ibn Ḳutaibah, *Kitāb al-Ma'ārif*, 276 ; (*'Uyūn al-Akhbār* (ed. Brockelmann) 82, 10 has Salmān ibn Rabī'ah in 'Irāḳ, then in Madā'in, and at Kūfah Abū Ḳurrah) ; al-Ḳalḳashandī, I, 251.

[2] Cfr. Ibn Sa'd V, 13, 15 ; Ṭabarī III, 2477.

[3] Ibn Ḳutaibah, *Kitāb al-Ma'ārif*, 276.

[4] Ibn Ḳutaibah, *ibid* ; Ṭabarī 1. 2578 ; Ibn Khallikān (transl. de Slane) IV, 35 ; *Kitāb al-Iṣti'āb*, I, 228 ; *Kanz al-'Ummāl* VII, 125 (Nos. 1081 et seq.).

[5] al-Ḳalḳashandī *loc. cit.*

[6] Ṭabarī I, 2464, 15 ; 2451, 5 ; 2637, 1. He was Cadi in Kūfah at one time. Bilādhurī 204 ; Ibn Ḳutaibah, *'Uyūn al-Akhbār* 82, 10 ; Ibn al-Fakīh, *Kitāb al-Buldān* (ed. de Goeje) 293, 13 ; 171, 16 ; *Kitāb al-Iṣti'āb* 583.

[7] Text in Ibn Ḳutaibah, *'Uyūn al-Akhbār* 87, 14 ; al-Mubarrad, *Kāmil* (ed. Wright) 9, 3 ; Māwardī, *Aḥkām al-Sulṭaniyyah* 119 ; Ibn Khaldūn, *Muḳaddamāt*, ed. de Slane 397 (transl. 449) ; ed. Bulak 192 ; German translation in von Hammer, *Länderverwaltung*, 206. See, also, Baihāḳī, *Kitāb al-Maḥāsin* (ed. Schwally), 532.

[8] That a judge should not officiate when angry is a frequent admonition, e. g. *Bukhārī* (ed. 1315 A. H.) IX, 65 ; al-Ḥasan ibn 'Abdallah, *Āthār al-Uwwal* (Bulak 1295 A. H.), 14 ; Sha'rānī, *Kashf al-Ghummah* II, 164.

the same man. Thus, 'Abdallah ibn Mas'ūd (d. 32 A. H.) was placed in charge of justice and of the public treasury in Kūfah[1]. In Egypt, Sulaim ibn 'Itr was tax-gatherer as well as Cadi[2]. The study of the papyri has proven that the governor, or Ṣāḥib, as he was then called, had not only charge of the fiscal administration but also had jurisdiction in civil and penal matters[3]. In the Mohammedan state the sovereign power never gave up in full its supreme rights over every part of the body politic ; and this right devolved upon his representative. One of these rights was the dispensing of justice. Ibn Khaldūn[4] has pointed out how the office of Cadi developed. At first he had to judge only between individuals ; but the burden of statesmanship became so great as to make it impossible for the Caliph or even for his representative to busy himself with the multitude of affairs that touched the inner life of the community. Many of these cares were cast upon the shoulders of the Cadi. It became his duty to take charge of the weak minded, of orphans and of bankrupts. Testamentary disposals and pious foundations were committed to his care. At times he was also inspector of streets and buildings, especially of market places and of weights and measures.

The highest judicial function, *al-naẓr fi-l Muẓālim*, the right to sit in cases of appeal from the judges or from any iniquity on the part of an officer of the state, was not necessarily a prerogative of the Cadi. It was a prerogative reserved by the early Caliphs- especially Omar ibn al-'Azīz and the 'Abbāsids[5]. From time to time the Caliph delegated this function to some high officer, Vizier or Cadi, and it was natural that the latter, because of his special legal knowledge, should often be called upon to fill such an office. Ibn Khaldūn says that up to the time of al-Muḳtadī the 'Abbāsid, the Caliph did not surrender this dignity[6]. Perhaps one of the severest duties, in his strictly judicial functions, was connected with the examination and the confirmation of witnesses. They must be of good name and family. Minors, slaves, the sick, those under guardianship, Christians and unbelievers were rigorously excluded. The importance of these duties will be gaged when it is remembered that written evidence was never considered sufficient in Mohammedan law ; in fact, in most cases it was never received. Real testimony was the *viva voce* evidence of the witnesses[7]. A relic of the later feudal days was the employment of a Cadi to lead the Jihād- probably because of the religious character given to such undertakings, when it was necessary to mask them from mundane eyes. Ibn Kahldūn cites as examples of such warring Cadis Yaḥya ibn Aktham in the reign of al-Ma'mūn[8], al-Mundhir ibn Sa'īd, the Cadi of the Umayyid Caliph in Spain, 'Abd al-Raḥmān

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[1] Ibn Sa'd III, 1. 111, 12 : Ibn Ḳutaibah, *Kitāb al-Ma'ārif*, 128.

[2] Abū-l-Maḥāsin I, 103, 214 (Cfr. Ibn Ḥajar, *Iṣābah*, II, 252.).

[3] C. H. Becker, *Papyrus Schott-Reiner*. Nos. 4, 10, 11.

[4] Ed. de Slane 398 (transl. 450).

[5] al-Baihākī, *Kitāb al-Maḥāsin*, 525 contains à number of anecdotes to show how the early Cadis heard such complaints.

[6] Māwardī, *Aḥkām al-Sulṭāniyyah*, 39, 128 ; Ibn Khaldūn, *Muḳaddamāt* (Beirut, 1886), 193. 'Abd al-Malik ibn Marwān (65-86 A. H.) was the first to appoint a special term for the hearing of these complaints and to charge the cadi Abū Idrīs al-Audī with the function. Van der Berg, *Principes du droit musulman* (La Haye 1896), 206, 241; Al-Baihāḳī, *Kitāb al-Maḥāsin*, 565.

[7] *Rev. de l'hist. des Relig.* xxxviii, 181 ; Juynboll *Handleiding*, 294.

[8] Ṭabarī III, 1102, 3 (215 A. H.) ; 1104. 16 ; though al-Ma'mūn expressed an unfavourable opinion of him upon his death-bed, *ibid.*, 1139. Ibn Khallikān seems to know nothing of all this (transl. de Slane IV, 33).

al-Nāṣir. At other times the more religious nature of the office was apparent, and the care of the mosques was given to the Cadi by the Caliph[1]. When he was also preacher, his influence over his immediate flock must have been great, and we know of what service certain Cadis of the family al-Nu'mān were in propagating the Alid ideas of the Fatimide Caliphs in Egypt[2].

It is no wonder then, that care was taken in the appointment of the Cadi. An old saying has been handed down : « He who appoints a Cadi has already slaughtered himself without a knife[3] ». The Caliph Omar ibn 'Abd al-'Azīz is reported to have said[4] : five characteristics are demanded in a Cadi ; he should be intelligent, considerate[5], modest, severe and wise, knowing how to ask about that of which he is ignorant. In another form of the tradition, he is made to say : « A man has no right to be Cadi who does not unite in himself five qualities : modesty, consideration, intelligence in regard to that which has preceeded him, the willingness to ask the opinion of those who can give good counsel, and fearlessness of blame[6]. » To appoint a Cadi is considered in all the legal books to be a duty resting upon the community[7]. It is laid down that there must be a sufficient number of judges in every community, that the distance between one court and another must not be more than about a half a day's journey (so that a man who goes to court may be able to return to his home on the same day) ; court must be situated in an accessible place. The character of the Cadi is a matter to which all Mohammedan jurists attach great weight, following the tradition related above of Omar II. Al-Māwardī himself a Cadi, in his Akhkām al-Sulṭāniyyah[8] has given us the conditions which were supposed to govern the choice of those who were to hold office. The Cadi may be appointed either by the Caliph, the Vizier or Āmir ; he must be male, of full legal age ; in possession of all his faculties ; a free man ; a Mohammedan ; unpu-

[1] Ibn Khaldūn, *Muḳaddamāt*, transl. 446.

[2] Gottheil, *A Distinguished Family of Fatimide Cadis* in *J. A. O. S.*, xxvii, 217. The power which a Cadi might wield is seen in the influence exercised by Yaḥyā ibn Aktham at the court of al-Ma'mūn, Ibn Khallikān, transl. iv, 34. Some fine stories about his independance are told by al-Baihāḳī, *Kitāb al-Maḥāsin*, 532. On various Califs that allowed themselves to be judged by Cadis, see al-Ḥasan ibn 'Abd Allāh, *Athār al-Uwwal*, 85.

[3] *Kanz al-Ummāl*, III, 206 (No. 3091). A variation of this is : « he who judges between men has already slaughtered himself without a knife ».

[4] Ibn Sa'd, V, 272. Bukhārī (ed. 1315 A. H.) IX, 67.

[5] On *ḥilm* as a characteristic highly praised by the Arabs, see the excellent notes in *Mélanges de la Faculté Orientale* (Beyrout) I, 66 and the traditions in *Kanz al-Ummāl* II, 28 ; al-Baihāḳī. *Kitāb al-Maḥāsin*, 553.

[6] Ibn Ḳutaibah, *'Uyūn al-Akhbār* 81, lays down the following conditions : the Cadi must be wise before he receives the appointment, willing to ask advice of the learned, attentive to that which is blameworthy, equitable to an opponent and obedient to authority. See also *Précis de jurisprudence Musulmane par Sidi Khalil* (Paris 1855) p. 189 ; tr. Perron, IV, 125 ; tr. Seignette 433. As many as fifteen conditions are laid down by Aḥmad ibn al-Ḥasan al-Iṣfahānī in his *Taḳrīb*-on the margin of al-Ghazzī's commentary p. 61.

[7] Sachau, *Muhammedanisches Recht*, 695, 1 ; Juynboll, *Handleiding* 288. *Wilāyat al-Kadā'i farḍun 'ala-l-kafāyah*, Al-Shīrāzī, *al-Tanbīh* (ed. A. W. T. Juynboll) 312, 19. In general, see L. W. C. Van den Berg, *Over het Ambt van der Qâdhi*, in *Tijdschr. van het Batav. Genootsch. v. Kunsten*, xviii, 418-434.

[8] Ed. Enger, 107 et seq. A resumé can be found in von Kremer, *Culturgeschichte des Orients*, i. 415 ; D. Julian Ribera Tarrago, *Origenes des justicia de Aragón*, (Zaragoza 1897), 108 ; Juynboll, *Handleiding* 287. Cfr. also, al-Shīrāzī, *loc. cit.* 312, 9 ; *Minhāj al-Ṭālibīn* (ed. Van den Berg) III, 304 : Shihāb al-Dīn al-'Umarī, *al-Ta'rīf fī muṣṭalaḥ al-Sharīf* (Cairo 1312 A. H.) 116 ; al-Dardīr, *Sharḥ 'aḳrab al-masālik*, II, 205.

nished ; in good physical condition, especially as regards his sight and hearing ; he must have a knowledge of the law, both practical and theoretical. His appointment can be either oral or written[1], and either for a particular place or with a wide jurisdiction[2] ; either as general Cadi or as special, e. g. for marriages, associations[3]. His diploma, however, must be read in public, usually in some mosque ; and likewise his deposition must be publicly proclaimed. Great pomp accompanied the official appointment and presents of robes and the like were expected from the Caliph or ruler. That the conditions thus exacted were always present is a matter of natural doubt ; but they represent the ideal of Mohammedan justice. There is quite a literature extant upon this subject called Adab al-Ḳāḍī (The Judge's Rule of Conduct), and a section with the same title is found in most of the works on jurisprudence, which comprises not only the ethical requirements but also the actual duties of the Cadi[4]. The earliest work on the subject seems to have been that of the Ḥanafite Abū Yūsuf Ya'ḳūb ibn Ibrāhīm[5], who died in the year 182 A.H.[6] In addition, such authors may be mentioned as Aḥmad abū Bakr al-Shaibānī of Bagdad (d. 261 A.H.) ; Ibrāhīm ibn Abī al-Dam of Emesa (ca. 642 A.H.), Zakarīyyā ibn Muḥammad ibn al-Anṣārī (d. 926 A.H.)

A similar feeling of responsibility seems to haver rested upon those that accepted the office. Even Omar is said to have excused himself when an appointment as Cadi was offered to him[7]. 'Alī too demurred when sent by Mohammed to Yemen ; largely upon account of his youth[7]. The best men, at times, absolutely refused to go on the bench ; the most noteworthy cases being those of the two great jurists Abū Ḥanīfah (d. 119 A.H.) and al-Shāfi'ī ; the first of these two even suffering imprisonment for his refusal[9].

With the developement of Mohammedan jurisprudence and the rise of varying schools of law, the predilection of the Caliph or Wālī (governor) or Vizier for one of the schools exercised a determining influence in the appointment of the Cadi. The rite of Mālik ibn Anas seems to have been dominant in Egypt ; the Cadi Isma'īl ibn Yas'a who came from Kūfah as a follower of Abu Ḥanīfah was unable to persuade the Egyptians to make a change. In 198 A.H. al-Shāfi'ī came to Egypt and

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[1] According to Omar, a Cadi was to be appointed only for two years: Van Berchem, *Titres Califiens d'Occident* (Paris 1907), 48. When a ruler died, his Cadis *ipso facto* lost their positions or had to be re-appointed.

[2] Thus we find a Cadi appointed in Egypt who had jurisdiction over the greater part of the dominious of the ruler ; *J. A. O. S.* xxvii, 275.

[3] See Khalīl *l. c.* tr. Perron, IV, 133.

[4] See the traditions gathered in *Kanz al-Ummāl* III, 173, 206 ; Abū 'Abd al-Raḥmān al-Nasā'ī with the commentary of al-Siyūṭī, III, 303 ; Aḥmad ibn Muḥammad al-Dardīr, *Aḳrab al-Masālik* (Cairo 1903), I, 30, and the commentary thereto *Sharḥ Aḳ.al-Masālik* (Bulak, 1864) II, 204, also the notes of Aḥmad ibn Aḥmad al-Kalyūbī to al-Maḥallī (Cairo 1306 A. H.) IV, 277.

[5] Ḥājjī Khalīfah I, 219.

[6] Or 183. On an *Adab al-Ḳāḍī* by Muḥammad ibn Aḥmad al-Kinānī, see Siyūṭī, *Ḥusn*, I, 141. On an *Adāb al-Ḳadā'i* by 'Alī ibn Aḥmad ibn Muḥammad al-Zabīlī, see al-Subkī, *Ṭabaḳāt al-Shāfi'iyyah* III, 290.

[7] Matthews, *Mischat ul-Masabih*, II, 223.

[8] *Kanz al-Ummāl*, III, 173 (No. 2624) ; al-Turṭūshī, *Sirāj al-Mulūk*, 37, 2 et seq ; Matthews. *loc. cit.* 222 ; Von Hammer, *Staatseinrichtung* 4 ; al-Diyārbakrī, *Ta'rīkh Khamīs*, II, 160 ; al-Shahrastānī, I, 155.

[9] al Sha'rānī, *Kitāb al-Mīzān* (ed. 1279 A. H.) II, 206 ; al-Abshīhī, *Kitāb al-Mustaṭraf*, I. 91, below ; Juynboll, *Handleiding*, 286. [Cf. *Le Rite du Refus*, Arch. f. Religw. T. XI p. 1-10. Réd.]

from that time on his system seems to have held sway[1]. During the Fatimide period, of course, the Cadi had to be an Ismailian ; though from the time of al-Mustanṣir on we read of the appointment of Shāfi'ite Cadis ; indeed, in the year 425 A.H. four Cadis administered justice- an Imāmī, an Isma'īlī, a Mālikite and a Shāfi'ite[2]. In the year 664 A.H., during the rule of the Mamluke al-Ẓāhir Baibars al-Bundukdārī (658-676 A.H.)[3], the custom was introduced to appoint a Cadi for each one of the four so-called orthodox schools. With the coming of the Turks in the 16th century A.D. the system of Abu Ḥanīfah was introduced and the Cadis appointed from that school. This custom of appointing four Cadis was then extended to Damascus, Aleppo, Tripoli, Emesa, Alexandria, Safed, Malatiyya[4] and probably to all the more important Mohammedan Centers. At an early time one Cadi was singled out as above all the others and received in the East the title of Chief Cadi (Kāḍi al-Ḳuḍāt) ; in the West he was « Cadi of the Community ». (Kādi al-Jamā'ah)[5]. In Bagdad the first to have this title « Chief Cadi » was Abū Yūsuf al-'Anṣārī, a pupil of Abū Ḥanīfah (d. 182 A.H.)[6]. Al-Maḳrīzī[7] gives us an account of the procedure before the Chief Cadi in Egypt which is well worth quoting. « The rank of such an one was the highest of the dignitaries of the turban and of the pen. Sometimes the same was also preacher : then he was called « Head Cadi and Head Preacher ». All religious matters were in his care. He took his seat every Saturday and Tuesday in the Ziyādah of the Mosque of 'Amru ibn al-'Āṣ in Old Cairo upon a divan (« mattress ») and a silken cushion... The witnesses sat to his right and left around him according to their precedence of rank. Near him were five attendants ; two in front, two at the door of his private room, and one to introduce those that came to him as litigants. Four guards stand near to him ; two facing two. He has an inkstand ornamented with silver, which is brought to him from the state treasuries ; a bearer is appointed for it, who is paid by the government. From the stables there is brought for him a grey mule ; one of such a colour being reserved for him alone. From the saddle-magazine a saddle is brought for him, richly adorned, on the outside of which is a plaque of silver. In place of hide, silk is used. Upon state occasions he wears chains and robes of honor faced with gold. But he is not accompanied with drum or trumpet, except when he is appointed preacher as well as judge : in which case the accompaniment of the dignity of preacher is the drum, the clarion, and the special flags ; for this one is the keeper of the flags with which the Wazīr « Chief of

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[1] This is the explicit statement of al-Maḳrīzī, *Khiṭaṭ*, II, 334. I can not, therefore, understand the remark of Abū-l-Maḥāsin in his *al-Manhal-al-Ṣāfī* (Quatremère, *Sultans Mamlouks*, I. 1. 97 note) that from the time of Abū Ḥanīfah to that of the Fatimides the Cadi was usually of the Ḥanifite School.

[2] The Shī'ah Cadis were removed by Saladin in 564 ; *Khiṭaṭ*, II, 343.

[3] This took place in the year 664 A. H. ; *Khiṭaṭ*, 344 top. ; Quatremère, *Sultans Mamlouks*, I. 1, 97. In principalities which are today only nominally under the suzerainty of the Sultan of Turkey, the Chief Cadi is still appointed directly by the Sultan ; e. g. in Egypt, and not by the Khedive. See Colvin, *The Making of Egypt*, (London 1907), 17.

[4] al-Ẓāhirī, *Kitāb Zubdat Kashf al-Mamālik* (ed. Ravaisse), 131 et seq.

[5] Ibn Khallikān (transl. de Slane) III, 433 ; IV, 342. The first to bear this title seems to have been Amr ibn 'Abd Allāh under the Califate of Muḥammad I, (250 A. H.). Before this the title had been *Ḳāḍī al-Jund* ; Dozy, *Supplément*, II, 363 b.

[6] Ibn Khallikān II, 273.

[7] Khiṭaṭ, I, 403. See *J. Q. R.* xix, 497. An illustration from an old manuscript of a Cadi sitting in judgement will be found in Nicholson, *Literary History of the Arabs*, Frontispiece.

the Sword » is honored. When he officiates specially as judge, there are about him readers, and before him the criers who proclaim the name of the Caliph and the Wazīrs of the day. He is borne (in state) by the lieutenants of the gate and the attendants[1]. No one approaches his presence, wishing to speak to him, even if he be Chief of the Sword and the Pen, nor does messenger or mission approach, except they receive permission. He addresses no one when he is in the seat of judgement ; nor is a witness heard, except at his order. He sits in the Ḳaṣr on Monday and Thursday at early noon in order to salute the Caliph. His representatives (also) give judgement : the head of the Treasury must report to him. He has, also, to watch over the Dīwān of the Mint, in order to render an account of the money that is minted ».

A similar account is given by al-Ḳalḳashandī[2]. The latter tells us that the Chief Cadi received as pay one hundred dinars a month, which was of course small compared with that of the Vizier (five thousand a month) ; but was as much as some of the highest officers in the immediate vicinity of the Caliph received. In reality the Cadi was to receive no payment for his services[3]. Omar is reported to have said « The Cadi of the Moslems ought not to receive any pay[4] ». If he was poor, however, he might receive a stipend from the Treasurer (Bait-al-Māl) and also payment for his assistants. Four times in the year a special seance was instituted by the Caliph for the Cadi and the notaries. These took place at night and were accompanied with illuminations and ceremonial. Al-Ḳalḳashandī gives us a full description of these entertainments.

The conditions asserted above for the appointment of a Cadi were indeed ideal ones. Van der Berg has in this connection aptly cited the Latin proverb « leges sine moribus vanae »[5] ; the uprightness of the Cadis depended only too often upon the state of society in which they lived. The ills which often beset our modern judges beset Mohammedan ones as well. In addition, the religio-political character of Islamic supremacy brought it about that the temporal ruler, be he Caliph, Sultan or Wālī, too often interferred with the rights and the duties of the Cadi[6]. Appeal to this higher power was always possible ; and so it has come about that to-day in most Mohammedan countries the Cadi is appealed to only in matters that relate to private rights,-marriage, trusteeship, testamentary succession and

[1] The court of a Cadi must have been quite large. He had assessors, chamberlains, secretaries, dragomen and the like. See Khalīl *l. c.* tr. Perron, IV, 139 etc. On the *Kātib* and his qualifications, see *Iḳd al-farīd* II, 211 ; Ḳasṭalānī (ed. 1288 A. H.) X, 288.

[2] Transl. Wüstenfeld, I, 184.

[3] See the anecdote related of Siwār ibn 'Abd Allāh in Ibn Ḳutaibah, *'Uyūn al-Akhbār*, 91, 7.

[4] *Kanz al-Ummāl*, III, 177 (No. 2672). A similar saying is attributed to 'Alī, *ibid.* 173 (No 2627). The first Cadi to receive pay was Zaid ibn Thābit in Medinah ; *Kanz al-Ummāl*, III, 176 (No. 2655), Von Hammer, *Länderverwaltung*, 4 (from the Awā'il literature). For Zaid, cfr. the tradition from al-Wāḳidī cited by Ibn Ḥajar, *Iṣābah*, II, 42 : Kāna zaidun ra'san bil-madīnah fīl-Ḳadā'i wal-fatwa wal-karā'ah wal-farā'iḍ. In the raids carried on under Mohammad's direction, Zaid is always mentioned as one of the appraisers of the booty ; e. g. Wellhausen, *Muhammad in Medina*, 291, 295 etc. It is generally conceded that a Cadi may engage in business, though al-Shāfi'ī, Mālik and Ibn Ḥanbal deem it better that he do so through a third person ; al-Sha'rānī. *Mīzān* II, 206. Bribery was, of course, severely frowned upon ; see the traditions in *Kanz al-Ummāl*, III, 177 (Nos. 3678 et seq.) Sha'rānī, *Kashf al-Ghummah*, II, 164.

[5] *Tijdschr. van het Batav. Genootsch. v. kunsten*, xviii.

[6] *Revue de l'hist. des Relig.* xxxvii, 192.

pious foundations[1]. An old writer on legal matters, Abu Muẓaffar Yaḥyā ibn Ḥubairah (6 th century A. H.) is reported by al-Sha'rānī[2] to have complained of the difficulty experienced in finding all the conditions laid down by the jurists united in any one man, especially those concerning his deep knowledge of the law, « for in our days the conditions that characterized the great doctors of the law are not found in most of the Cadis ». And Abū Ḥanīfah expressly permitted the investiture of a Cadi, even if he were not deeply versed in the subtleties of the law.

The Cadis were thus in many ways important personages in Mohammedan civilization. Both as individuals and as a class they form a fitting subject for biographical treatment. Not only are the lives of many of them to be found in the biographical works of Ibn Khallikān, al-Subkī, al-Kutubī, al-Dhahabī, etc., but the history of the Cadis formed a specific branch of Mohammedan biographical science. In his chapter on the 'Ilm al-T'arīkh, Ḥājjī Khalīfah divides this science into the following subdivisions : 1. the general history of the Cadis ; 2. the history of the Cadis of Egypt ; 3. the history of the Cadis of Bagdad ; 4. the history of the Cadis of Damascus. Originally, such histories followed the sequence of events, giving an account of the man and of the stewardship of his office in the chronological order of events. At a later time the data here gathered formed the basis for biographical poems and biographical dictionaries.

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[1] Juynboll, *Handleiding*, 311 ; Snouck-Hurgronje, *Mekka*, i, 182.

[2] *Mīzān* (Ed. 1279 A. H.) II, 204 ; Aḥmad ibn Muḥammad al-Dardīr (1715-1786) in his *Sharḥ akrab al-Masālik*, II, 205 complains about the ignorance of the Cadis of Cairo ; all they did was to affix their name to a document : *la yasma'u da'wā wala ya'rifu ḥaḳḳīḳātahā.... fayaḳtubu 'smahu wa-yaḍa'u khatmahu min ghairi ziyādati.*

PAUL GEUTHNER, 68, RUE MAZARINE, PARIS

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Le texte du présent recueil est excellent, le copiste qui l'a transcrit semble bien avoir été un des plus habiles et des plus soigneux de son temps ; mais surtout, si le manuscrit de Bamberg mérite de fixer notre attention, c'est que les motets qui s'y trouvent contenus représentent la forme la plus parfaite et la plus caractéristique de cette forme de la composition polyphonique au siècle de Saint Louis. Vers la fin du XIII^e siècle, ce genre avait atteint son point de perfection et le type qui est suivi dans le manuscrit de Bamberg nous montre le motet classique du moyen âge.

L'examen du texte poétique des motets ne nous permet d'en prendre qu'une connaissance incomplète. A lire les pièces qui sont publiées dans les recueils de MM. Stimming et Gaston Raynaud, on croirait volontiers que ce sont là des compositions isolées, définitives, formant un tout par elles-mêmes. Cependant, rien de plus contraire à la réalité que cette interprétation. Un motet est une œuvre qui a vécu, qui a passé par des états successifs et qui a une histoire. Or, l'étude musicologique seule nous permet de retrouver et de retracer cette histoire. Le philologue est impuissant devant cette tâche. Mais en prenant comme auxiliaire le texte musical, nous pouvons rapprocher toutes les compositions, soit latines, soit françaises, qui ont été écrites sur un même timbre mélodique, et nous arrivons ainsi à établir comment tel motet en langue vulgaire n'est qu'une traduction ou une adaptation faite sur un motet latin plus ancien, comment telle pièce à deux voix est destinée à devenir le noyau d'une composition à trois ou quatre parties, etc. Il semble que le philologue, préoccupé seulement de donner un texte critique, n'ait que faire de ces rapprochements. Mais il y a mieux : l'étude qui précède la publication explique pourquoi, seul, entre toutes les formes de la poésie lyrique au treizième siècle, le motet a été constamment écrit en vers libres. Ceci n'est point négligeable, et, si ce n'est qu'un exemple, il montre du moins qu'en certains cas les recherches musicologiques méritent d'intéresser les philologues et les historiens de la littérature.

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REVUE D'HISTOIRE DES DOCTRINES ECONOMIQUES ET SOCIALES

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Internationale. Trimestrielle. — Première année 1908.

L'histoire joue un rôle sans cesse grandissant, elle est devenue une discipline indispensable dans les sciences sociales.

L'évolution des faits et l'évolution des idées constituent le double objet de ses recherches. On ne saurait sans doute établir une séparation complète entre l'une et l'autre ; mais la nécessité d'une division du travail poussée toujours plus loin à mesure que la science progresse, oblige l'historien à consacrer à l'une d'elles ses efforts à peu près exclusifs, à se cantonner sur l'un des deux domaines, en se servant de la connaissance de l'autre comme d'une science auxiliaire. L'histoire de la pensée humaine, distinguée mais non isolée absolument de l'histoire des institutions et des faits, forme ainsi "une des grandes branches de l'histoire de l'évolution sociale.

On ne nous en voudra pas d'affirmer que, dans cette branche, l'histoire des doctrines économiques et sociales constitue la ramification la moins développée, bien moins avancée que l'histoire du droit, que l'histoire de la philosophie, que l'histoire de l'art. Elle est, en outre, en France, qui pourtant vit naître la science économique avec les Physiocrates et qui, au XVIII^e^ siècle, fut si féconde en économistes et en reformateurs sociaux, moins avancée qu'en Italie et en Allemagne.

Depuis quelques années cependant, bon nombre d'ouvriers se sont mis à défricher ce champ immense ; monographies et ouvrages d'un caractère plus général commencent à s'accumuler. L'histoire des Doctrines économiques qui dans les Facultés de Droit françaises fait l'objet d'un Cours spécial, y a suscité un certain nombre de Thèses de Doctorat politique et économique dont quelques-unes sont tout à fait remarquables ; elle paraît aussi attirer de plus en plus les candidats au Doctorat ès-lettres et là aussi nous pourrions citer plusieurs travaux de haute valeur.

Mais il reste encore une étendue de terres vierges à fouiller, qui réservent bien des surprises aux pionniers. Il est peu d'œuvres scientifiques aussi utiles et aussi passionnantes à entreprendre que celle-ci ; si elle se développe avec lenteur, c'est sans doute qu'elle se heurte à des obstacles qu'il serait urgent d'aplanir. Il n'existe jusqu'à présent aucun organe spécial pour stimuler, faciliter et grouper ses efforts. Il est, en outre, difficile et coûteux de réunir les sources ; certaines, devenues très rares, devraient être réimprimées, les unes en entier, les autres par extraits ; d'autres, encore inédites, devraient être publiées ; ces dernières nous révéleraient chez certains penseurs, auteurs de *Mémoires*, donneurs d'*Avis*, passionnés souvent pour le bien public et désintéressés des états d'esprit, des nuances et des audaces de pensée que nous ne soupçonnons pas, qui nous étonneraient et qui nous expliqueraient bien des choses ; qui nous expliqueraient la genèse des théories, même de transformations sociales, résultat du labeur souterrain d'obscurs écrivains que la gloire n'a pas récompensés, qui même parfois ont travaillé pour la gloire d'autres doués de plus de talent mais non de plus d'originalité d'esprit.

Ce sont ces considérations qui nous ont amené à créer la *Revue d'Histoire des Doctrines Economiques et Sociales*. Articles originaux, réimpression de textes et notamment de passages extraits d'œuvres qui, pour des raisons diverses, ne peuvent être intégralement reproduites en volumes indépendants, publication de manuscrits inédits d'auteurs appartenant à l'histoire ; bibliographie et comptes-rendus bibliographiques de travaux rentrant dans le cadre de cette Revue, voilà approximativement quel sera le contenu de ce nouveau périodique.

Il accueillera les articles relatifs à l'*histoire* de tout ce qui est science économique, théorie de politique économique, doctrine d'art économico-social, et même ceux, *pourvu qu'ils aient un caractère nettement historique*, décrivant ou exposant, en *tant qu'elles révèlent ou commandent une certaine opinion économique*, des institutions économiques, politiques ou juridiques, ou des théories de morale religieuse ou de morale indépendante.

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